

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DWAYNE EICHLER,

Plaintiff,

No. CIV S-04-1108 GEB JFM P

vs.

CDC OFFICER SHERBIN, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se and in forma pauperis. On July 14, 2005, plaintiff filed a document entitled "Amended Notice of Motion and Motion for Leave to Appeal In Forma Pauperis." Plaintiff renews his April 12, 2005 request to appeal from "the judgment entered on March 15, 2005."¹ The Clerk of the Court will be directed to process plaintiff's interlocutory appeal.

Plaintiff requests leave to proceed in forma pauperis on appeal. Rule 24 of the Federal Rules of Appellate Procedure provides as follows:

////

¹ By order filed May 27, 2005, this court construed plaintiff's March 15, 2005 filing as a request for reconsideration and, upon reconsideration, dismissed plaintiff's second amended complaint and granted plaintiff leave to file a third amended complaint to include his claims against defendant hospital.

1 a party who was permitted to proceed in forma pauperis in the
2 district court action. . . may proceed on appeal in forma pauperis
3 without further authorization, unless . . . the district court . . .
certifies that the appeal is not taken in good faith or finds that the
party is not otherwise entitled to proceed in forma pauperis

4 Fed. R. App. 24(a)(3). Thus, plaintiff's request to proceed in forma pauperis on appeal will be
5 denied as unnecessary.

6 Plaintiff also filed a request for trial transcripts and excerpts of record to be
7 prepared at government expense. Title 28 U.S.C. § 753(f) states:

8 Fees for transcripts furnished in other proceedings to persons
9 permitted to appeal in forma pauperis shall also be paid by the
United States if the trial judge or circuit judge certifies that the
appeal is not frivolous (but presents a substantial question).

10 Id.

11 In the instant case, neither the trial judge or circuit judge has certified that the
12 appeal was taken in good faith. Accordingly, plaintiff's request will be denied without prejudice.

13 In accordance with the above, IT IS HEREBY ORDERED that:

- 14 1. The Clerk of the Court is directed to process plaintiff's April 12, 2005 appeal;
15 2. Plaintiff's July 14, 2005 request for leave to appeal in forma pauperis is denied;

16 and

- 17 3. Plaintiff's July 14, 2005 request for transcripts is denied without prejudice.

18 DATED: July 27, 2005.

19
20 
21 UNITED STATES MAGISTRATE JUDGE

22 /001; eich1108.tra
23
24
25
26